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Supreme Court, U.S.
FILED

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In The

SUPREME COURT of the UNITED STATES

October Term, 1998

ANDRE SHAWN CRENSHAW, a/k/a
SHAWN HENRY CRENSHAW, a/k/a
ANDRE MAPP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DENNIS P. COFFEY
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26pp

Questions Presented

1. Whether the petitioner was entitled to a Bill of Particulars providing the names of persons he allegedly organized, supervised, or managed in violation of Title 21 U.S.C. Sec. 848 (count 2, indictment) so as to know whether he was charged in the Continuing Criminal Enterprise count with the same conduct as alleged in the Conspiracy count (count 1, indictment) in violation of Title 21 U.S.C. Sec. 841 (a) (1) and 846?

2. Was the petitioner charged in the indictment with two separate crimes (Continuing Criminal Enterprise and Conspiracy to Distribute Controlled Substance) or a single crime (Continuing Criminal Enterprise) and a lesser included offense of the Continuing Criminal Enterprise (Conspiracy)?

PARTIES BELOW

United States of America

Travis L. Bean - No. 98-1350

Anthony T. Bean - No. 98-1378

Andre Shawn Crenshaw - No. 98-1581

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No. _____

In The

SUPREME COURT of the UNITED STATES

October Term, 1998

ANDRE SHAWN CRENSHAW, a/k/a
SHAWN HENRY CRENSHAW, a/k/a
ANDRE MAPP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner ANDRE SHAWN CRENSHAW prays that a writ of certiorari issue to review the judgement and opinion

of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on November 23, 1998.

Citation to Opinion Below

The opinion of the United States Court of Appeals is not reported; the Court's decision appears in an unpublished Order and is printed in the Appendix, infra, pp. 1a-6a. The Order of the United States District Court, Eastern District of Wisconsin, is unreported. It is printed in the Appendix, infra, pp. 7a-8a.

Jurisdiction

The Opinion and Order of the United States Court of Appeals for the Seventh Circuit was entered on November 23, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254.

Constitutional Provisions Involved

Amendment V

No person shall... be deprived of life, liberty, or property, without due process of law;...

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation;...

Federal Rule Involved

Rule 7 (f), Rules of Criminal Procedure

The court may direct a filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Statement of the Case

On May 9, 1997 an indictment was filed with the Clerk of Court's Office for the United States District Court, Eastern District of Wisconsin. This indictment charged petitioner in multiple counts with having violated the laws of the United States relating to controlled substances.

On May 9, 1997 petitioner appeared before a United States Magistrate Judge for arraignment.

On August 12, 1997 a superseding indictment was filed.

Petitioner in the superseding indictment was again charged with multiple offenses. At issue herein is the relationship, if any, between count 1 of the superseding indictment - conspiracy to distribute cocaine and cocaine base in violation of 21 U.S.C. Sec. 841 (a) (1) and Sec. 846 - and count 2 of the superseding indictment - engaging in a continuing criminal enterprise in violation of 21 U.S.C. Sec. 848.

Petitioner sought a bill of particulars identifying the persons he allegedly organized, supervised, or managed with respect to count 2. The District Court denied petitioner's request.

On October 27, 1997 a jury trial was commenced before the District Court, and on November 7, 1997 the jury returned verdicts of guilty as to all counts naming the petitioner.

On February 24, 1998 the defendant was sentenced.

On March 6, 1998 a Notice of Appeal was filed on behalf of the petitioner.

On November 23, 1998 the United States Court of Appeals for the Seventh Circuit rendered its opinion and affirmed the judgement of conviction.

Statement of Facts

Count 1 of the indictment ultimately brought to trial by the

government charged the petitioner with having conspired, contrary to 21 U.S.C. Sec. 841 (a) (1) and Sec. 846, to distribute cocaine and cocaine base. Count 1 alleged that the petitioner engaged in this conduct with Travis Lamar Bean, Anthony Terrell Bean, Robert Earl Bean, and other "persons known and unknown to the grand jury..." Count 2 of the indictment alleged that petitioner engaged in a continuing criminal enterprise by committing a continuing series of felony violations of 21 U.S.C. Sec. 841 (a) (1) and 843 (b). The indictment alleged that the continuing series of violations included counts 11, 12, 13, 14, 15, 16, 17, and 18 of the indictment. The enumerated counts related to telephone conversations and deliveries of controlled substances to a single individual. That person was cooperating with the government at the time of these incidents. He was not named as, nor could he be a co-conspirator. Count 2 of the indictment did nct identify any persons "organized, supervised, or managed" by petitioner. Petitioner, by counsel, sought a bill of particulars. The requested particulars were the names of the persons organized, supervised, or managed by the petitioner. The United States District Court denied petitioner's request. (App. pp. 7a-8a.)

Reasons for Granting the Writ

Petitioner was constitutionally guaranteed that he not be deprived of his liberty without due process of law and that he be informed of the nature and cause of the accusation lodged against him. In rejecting petitioner's request for a bill of particulars the District Court, adopting a Magistrate Judge's reasoning held that the government's "open file policy" obviated any need for a bill of particulars. The United States Court of Appeals affirmed the District Court's Order holding that petitioner had failed to establish a clear abuse of discretion by the District Court denying the bill of particulars because the District Court dismissed the continuing criminal enterprise count at the close of the government's case. In hindsight, the Court of Appeals noted that petitioner "...must have had adequate information at his disposal, without a bill of particulars, to mount a good defense to the charge..." because the continuing criminal enterprise count was dismissed. (App. p. 4a) Neither the District Court nor the Court of Appeals addressed petitioner's most basic contention. That most basic contention arises from the question: Was the government's theory in indicting the petitioner to allege count one, the conspiracy, as a crime committed without reference to the continuing criminal

enterprise offense alleged in count 2 of the indictment? In preparation for trial, the government's "open file policy" could not provide the answer to this question. The system's response to petitioner's request that his constitutional rights to due process of law and to be informed of the nature of the allegations against him were somehow met post-presentation of the government's case by the District Court's dismissal of the continuing criminal enterprise charge.

This Court in *Rutledge v. United States* 517 U.S. 292, 116 S.Ct. 1241, 134 L. Ed. 2d 419 (1996) discussed a case where the "in concert" element of the continuing criminal enterprise offense was based upon the same agreement as the conspiracy violation of 21 U.S.C. Sec. 846. In *Rutledge,* the District Court had sentenced Rutledge to concurrent life sentences on the conspiracy and the continuing criminal enterprise counts. The United States Court of Appeals for the Seventh Circuit affirmed that action on the part of the District Court. This Court held that 21 U.S.C. Sec. 846, conspiracy, is a lesser included offense of a continuing criminal enterprise offense in violation of 21 U.S.C. Sec. 848. However, an alleged conspiracy (Sec. 846) is only a lesser included offense of a continuing criminal enterprise violation (sec. 848) if the "activities in concert" are the same activities. In petitioner's

case, the specific violations alleged by the government to establish a series of violations did not involve petitioner's organizing, supervising, or managing of persons identified in count 1, the conspiracy. The individual with whom the petitioner was involved in the identified activities with respect to the continuing criminal enterprise violation was a government informant. No evidence exists that the persons identified as conspirators in count 1 of the indictment had any contact or relationship with the person or the activities in the enumerated series of violations in count 2.

In *United States v. Canino,* 949 F. 2d 928 (7th Cir., 1991) the Court of Appeals held that an "open file" policy followed by a prosecutor's office may provide a defendant with adequate notice so as obviate the need for a bill of particulars. Similarly, a defendant may be protected against unfair surprise as to the persons he supervised by reference to other counts of the indictment. See: *United States v. Tipton,* 90 F. 3d 861 (4th Cir., 1996). In the instant case, neither of these alternative methods for petitioner's discerning of the indentity of the supervisees were or would have been efficacious. The open file policy of the United States Attorney's Office obviously provided to the petitioner information describing the activities of various individuals. A reading of those

"facts" would not establish whether the petitioner was alleged by the government to have organized, supervised, or managed any of those individuals. Further, such a review would not establish whether or not the other individuals named as co-conspirators in count 1 of the indictment were, according to the government, organized, supervised, or managed by the petitioner. See: *United States v. Rosen,* 891 F. 2d 1063, 1065 (3rd Cir., 1989). As detailed earlier, reference to other counts in the indictment naming the petitioner would not have established that he organized, supervised, or managed the government's informant. A bill of particulars was necessary if the indictment did not sufficiently apprise the petitioner of the charges so as to enable him to prepare for trial. *United States v. Roya,* 574 F. 2d 386, 391 (7th Cir., 1978), cert. denied, 439 U.S. 857, 99 S. Ct. 172, 58 L. Ed. 2d 165.

Petitioner recognizes that the United States Court of Appeals for the Seventh Circuit assessed his claim that a bill of particulars should have been ordered based upon precedent in the Seventh Circuit indicating that the District Court's exercise of discretion with respect to the granting of a bill of particulars will not be disturbed on appeal absent a "clear abuse" of that discretion. *United States v. Kendall,* 665 F. 2d 126 (7th Cir., 1981). As a consequence, petitioner

recognizes that it is rare that this Court will exercise its supervisory authority to address such challenges further. However, it is respectfully submitted that the petitioner's substantial constitutional rights were prejudiced by the District Court's failure to order that the government provide the information requested by petitioner's application for a bill of particulars. This court has granted certiorari in the matter of *Richardson v. United States*, 130 F. 2d 765 (7th Cir., 1997) cert. granted No. 97-8629 to determine whether there is a jury unanimity requirement as to the offenses constituting the "series of violations" required for a conviction of engaging in a continuing criminal enterprise. It was only with the decision in *Rutledge,* supra, that this Court definitively resolved the issue as to whether a drug conspiracy was a lesser included offense of a continuing criminal enterprise. In *Roviaro v. United States*, 353 U.S. 53, 65, 77 S. Ct. 623, 1 L. Ed. 2d 639 (1967), fn. 15, this Court noted that the name and address of a participant informant should have been supplied in response to a Motion for a Bill of Particulars. In *United States v. Universal C. I. T. Credit Corporation,* 344 U.S. 218, 225, 73 S. Ct. 227, 97 L. Ed. 260 (1952) this Court said:

> "...a draftsman of an indictment may charge crime in a variety of forms to avoid fatal variance of the evidence. He may cast the indictment in several counts whether the

> body of facts upon which the indictment is based gives rise to only one criminal offense or to more than one. To be sure, the defendant may call upon the prosecutor to elect or, by asking for a bill of particulars, to render the various counts more specific. In any event, by an indictment of multiple counts the prosecutor gives the necessary notice and does not do the less so because at the conclusion of the government's case the defendant may insist that all the counts are merely variants of a single offense."

In the instant case, even now, the record is devoid of any indication whether the prosecutor drafting the indictment intended to have the grand jury indict petitioner for two separate courses of criminal conduct or for a single course of criminal conduct involving a greater and lesser offense. An Order directing that the petitioner's Motion for a Bill of Particulars be granted would have addressed this problem. The petitioner would have been provided with "due process" and would have been apprised of the nature and cause of the accusation against him. Specificity of details so as to allow preparation of a defense falls within the scope of a bill of particulars. See: *Glasser v. United States,* 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680 (1942).

While the United States Court of Appeals for the Seventh Circuit found any prejudice to the petitioner to be obviated by the District Court's dismissal of the continuing criminal

enterprise count, this disposition fails to address the substantial rights of the petitioner. Had the District Court not dismissed the continuing criminal enterprise count, and the jury found petitioner guilty of both the CCE and the conspiracy, on what basis would the District Court have sentenced petitioner? What right would the District Court have to decide that counts 1 and 2 and the jury's verdict of guilty thereon related to two separate courses of conduct - 2 crimes - as opposed to a finding of the greater and lesser offense? On what basis would the District Court have sentenced? See: *Rutledge v. United States*, 517 U.S. 292, 116 S. Ct. 1241, 1250-1251, 134 L. Ed. 2d 419 (1996).

Conclusion

For the reasons stated herein and because petitioner was denied certain basic Constitutional rights the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

DENNIS P. COFFEY
Attorney for Petitioner

APPENDIX

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued November 6, 1998
Decided November 23, 1998

UNPUBLISHED ORDER
NOT TO BE CITED
PER CIRCUIT RULE 53

Before

Hon. Walter J. Cummings, Circuit Judge
Hon. Frank H. Easterbrook, Circuit Judge
Hon. Terence T. Evans, Circuit Judge

Nos. 98-1350, 98-1378, and 98-1581

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TRAVIS L. BEAN, ANTHONY T. BEAN, ANDRE SHAWN CRENSHAW, also known as SHAWN HENRY CRENSHAW, also known as ANDRE MAPP,
Defendants-Appellants

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 96-CR-148

Thomas J. Curran, Judge.

ORDER

None of the issues raised in the appeals of Travis Bean, Anthony Bean, or Andre Shawn Crenshaw warrant discussion in a formal published order. Accordingly, we conclude their appeals in this unpublished order.

Three brothers, Travis, Anthony. and Robert Bean, along with Andre Shawn Crenshaw, went to trial before a jury on various drug-related charges in the fall of 1997. All the defendants were charged with conspiracy to distribute cocaine and cocaine base in count one. Crenshaw was charged with operating a continuing criminal enterprise (CCE) in count two, plus nine assorted counts covering such things as the distribution of cocaine (and cocaine base), use of a telephone to facilitate drug trafficking, and interstate transportation in aid of a drug dealing enterprise. In addition to the conspiracy count, Travis Bean was charged with three substantive counts of distribution of cocaine base. Anthony Bean was also charged with six substantive counts of distribution of cocaine base.

Prior to submitting the case to the jury, the district court dismissed the CCE count against Crenshaw and one of the distribution counts against Travis and Anthony. The jury ultimately acquitted Robert Bean on the only charge against him (conspiracy) and convicted Travis and Anthony Bean on the conspiracy count. The jury was unable to reach a unanimous verdict on the remaining counts against the Bean brothers. In addition to the conspiracy count, the jury convicted Crenshaw on the 10 other counts against him. Hefty sentences were imposed: 196 months for both Travis and Anthony Bean and 300 months for Crenshaw. This appeal followed.

Prior to the start of the trial, Crenshaw filed a motion for a bill of particulars. As to the CCE count, he asked for the identification of the five individuals he allegedly supervised, organized, or managed. The motion was denied. The denial of the motion is one of the three issues Crenshaw raises on appeal. His other issues concern the sufficiency of the evidence to support the guilty finding against him on the conspiracy count and a challenge to the determination of his "relevant conduct," i.e. the weight of the drugs attributed to him under the federal sentencing guidelines.

Travis Bean challenges the denial of his mistrial motion based on Batson v. Kentucky, 476 U.S. 79(1986). He also challenges the district court's decision to add two criminal history points to his guideline calculus for committing his crimes within 2 years of his release from a prior prison term. Anthony Bean simply piggybacks onto his brother's claim that a Batson violation occurred during the selection of the jury that convicted him. We'll start with the Batson claim, which can be quickly resolved.

The rule of Batson is well-understood. and we need not reiterate it here. The basis for the Batson challenge in our case is this: The government used one of its six peremptory challenges to strike an African-American, Vicky Stennis-Pearson, from the jury pool. While it may well be that Travis Bean failed, on the basis of the record developed below, to establish a prima facie case of a Batson violation, the district court nevertheless asked the prosecutor to explain the reason for exercising the peremptory challenge on Ms. Stennis-Pearson. The AUSA said that Ms. Stennis-Pearson's responses to certain voir dire questions demonstrated a degree of hostility toward the uncle of her children, a Milwaukee police officer, and that a number of police officers were going to be called as witnesses during the trial. Thus, she became one of the government's strikes because she might have viewed the police witnesses with suspicion.

The defense was offered an opportunity to demonstrate that the AUSA's stated reason was not true (i.e. was a mere pretext), but it failed to do so.

The impression about the challenged juror drawn by the AUSA may have been erroneous or even goofy. But there is nothing in the record to even remotely suggest that it was offered to camouflage a desire to remove a potential juror because she was black. There was no merit to the Batson challenge. as the district court appropriately found, and there simply is no way on this record we could conclude that the district judge's call on the point was clearly erroneous. United States v. Carter 111 F.3d 509, 512(7th Cir 1997) This conclusion makes it unnecessary for us to consider whether Anthony Bean can tag along on his brother's Batson challenge over the government's contention that Anthony waived the argument.

Travis Bean also argues that the district court improperly added 2 criminal history points to his guideline score because he committed his offense of conviction, conspiracy, within 2 years of having been released from a sentence of at least 60 days. U.S.S.G. §4A1.1(e). The enhancement rested on two facts: Travis Bean was discharged from custody on February 3, 1997, after serving a 90-day sentence for possession of marijuana, and the conspiracy charged in his case was alleged to have continued through May 8, 1997. Bean argues that he did not engage in any activity in furtherance of the conspiracy between his release from custody and the end of the conspiracy and that the enhancement, therefore, should not have applied.

Bean's argument ignores the general application of conspiracy law. In a conspiracy, each member is responsible for conspiratorial acts carried out by other conspirators unless he meets the legal requirements of withdrawal, and there is no evidence in this case that Travis did. On the other hand, there is solid evidence that Anthony Bean discussed drug transactions on January 30, 1997, and that Anthony made references to obtaining drugs from Shawn Crenshaw. This conversation established that the conspiracy continued to exist and that it was ongoing at the time Crenshaw was arrested in May of 1997. At his arrest, Crenshaw was in possession of a couple of pagers, $7,000 in cash in a bag, and a ticket for an airline flight the previous day from Houston to Chicago. The evidence contains many references to cocaine trafficking coming north from Houston by Crenshaw and others. Factually and legally, Crenshaw's activity proved that the conspiratorial acts, for which Travis was responsible, continued after his 90-day period of incarceration ended in early 1997. Finally, when Travis was arrested, along with Anthony, on May 27, 1997,

Anthony had $625 in cash and a wristwatch pager, and Travis carried his own pager. The evidence, again, is full of notations about the use of pagers and the collection of cash in the drug dealing conspiracy. Based on this record, we cannot conclude that Judge Curran's decision to invoke the 2-point enhancement under §4A1. 1(e) was clearly erroneous.

We now turn to Crenshaw's appeal. where he assigns error to the district judge's denial of his motion for a bill of particulars with regard to the CCE count in the indictment. That count alleged that Crenshaw engaged in a continuing criminal enterprise by organizing, managing, or supervising at least five other persons. Judge Curran denied the motion, finding that it merely sought evidentiary detail and that the government's open file discovery policy adequately provided him with the information he sought. We can only reverse this decision if we find a clear abuse of discretion by the judge. United States v. Kendall, 665 F.2d 12b (7th Cir. 1981), and that would be particularly hard to do in this case because the judge dismissed the CCE count at the close of the government's case, so we could not find any prejudice even if we were so inclined to rule.

Crenshaw persists in his argument that his motion should have been granted because he says he tailored his trial strategy more to defending the CCE count than the other counts that ultimately were submitted to the jury. We are unmoved by this argument. Although the dismissal of the CCE count can perhaps be chalked up to the talents of the high-caliber lawyer who represented him, he thinks it also shows that Crenshaw must have had adequate information at his disposal, without a bill of particulars, to mount a good defense to the charge. We find no merit to the continuation of this argument on appeal.

Crenshaw's challenge to the sufficiency of the evidence supporting his conspiracy conviction faces a long journey, which he does not come close to completing. Crenshaw concedes that there is evidence of his drug dealing but insists that it is insufficient to find that he was involved in a conspiratorial relationship with others. Unfortunately for him, the record is loaded with references to Crenshaw working with and directing others in the long-term (8 years) drug dealing enterprise alleged in the indictment's conspiracy count.

Crenshaw's two main coconspirators were the Bean brothers, at least Travis and Anthony. They engaged in a wide variety of drug transactions with witnesses to whom they stated that their source of cocaine was Crenshaw. Travis Bean fingered Crenshaw to Jermaine O'Connor in

the early 1990's and in early 1994; to Elijah Rimmer in 1991, to Bobby Wright; to Quan Davis in 1994; and to Davis again in 1996. Similarly. Anthony Bean characterized Crenshaw as his source of cocaine to Rimmer in 1991; to Derrick Davis, to Caprice Barksdale in 1995 and 1996; to Quan Davis in late 1996; and in a taped conversation with Quan Davis on January 30, 1997.

Rimmer testified in considerable detail about four trips he took for the purpose of transporting large amounts of cocaine from Houston to Milwaukee. Crenshaw made the arrangements for Rimmer's trips, met him in Houston, paid for his expenses, provided him with cocaine to take back, and picked that cocaine up from him in Milwaukee. This is strong evidence of a conspiratorial connection between Rimmer and Crenshaw. These trips also involved Travis Bean. Travis called Rimmer to arrange Rimmer's second trip in May of 1991 and was present in Houston when the cocaine was wrapped for transport back to Milwaukee. On Rimmer's third trip, Travis flew with him to Houston. Travis Bean was also present in Houston on Rimmer's fourth trip there to pick up drugs for transport.

Wright testified to a series of drug purchases by him and his associates from Crenshaw. He testified that when he wanted to buy cocaine from Crenshaw he would page Travis Bean and Crenshaw and Travis would come by with the drugs.

The record contains a lot more evidence, but nothing would be gained by listing it here. Suffice to say that Crenshaw's sufficiency of the evidence objection can't get off the dime.

Finally. we must reject Crenshaw's challenge to the district court's finding that the drug quantities in the conspiracy placed him in base offense level 36 under the sentencing guidelines. Judge Curran's finding in this regard was based on his assessment of the credibility of more than 10 witnesses who testified regarding drug transactions involving Crenshaw. Crenshaw's present challenge to this finding is little more than an invitation to us to second-guess the credibility determinations made by Judge Curran. We cannot accept that invitation. If believed, as the testimony was, a sufficient basis exists for the drug quantity findings made by the district court.

For these reasons, the judgments of conviction of all three defendants and the sentences imposed on Andre Shawn Crenshaw and Travis Bean are affirmed.

United States Court of Appeals

For the 7th Circuit
Chicago, Illinois 60604

JUDGEMENT - WITH ORAL ARGUMENT

Date: November 23, 1998
BEFORE: Honorable WALTER J. CUMMINGS, Circuit Judge
Honorable FRANK H. EASTERBROOK, Circuit Judge
Honorable TERENCE T. EVANS, Circuit Judge

NOS. 98-1350, 98-1378, AND 98-1581

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

TRAVIS L. BEAN, ANTHONY T. BEAN, and
ANDRE SHAWN CRENSHAW, also known as
SHAWN HENRY CRENSHAW, also known as
ANDRE MAPP,
Defendants - Appellants

Appeals from the United States District Court for the
Eastern District of Wisconsin
No. 96 CR 148, Thomas J. Curran, Judge

The judgment of the District Court is AFFIRMED. in accordance with the decision of this court entered on this date.

(1061-110393)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
Plaintiff, Case No. 96-CR-148

v.

ANDRE SHAWN CRENSHAW,
TRAVIS LAMAR BEAN,
ANTHONY TERRELL BEAN, and
ROBERT EARL BEAN,

Defendants.

ORDER

On September 24, 1997, United States Magistrate Judge Patricia J. Gorence denied the motion of Defendant Andre Shawn Crenshaw for a bill of particulars, finding that "the defendant's demands for particulars were for evidentiary detail [and] that the defendant was not entitled to such information particularly in light of the government's adherence to its 'open file' discovery policy in this case." The Defendant has appealed the order on the grounds that he is seeking due process notice and not evidentiary detail.

Federal Rule of Criminal Procedure 7(f) permits the filing of a bill of particulars, i.e. a more specific expression of the illegal activities which the Defendant is accused of having committed. United States v. Canino, 494 F.2d 928,949 (7th Cir. 1991), cert. denied, 504 U.S. 910 (1992). The purpose of a bill of particulars

is to provide the Defendant with the information necessary to prepare a defense and is thus only necessary when the indictment does not sufficiently apprise the Defendant of the charges to enable him to prepare for trial. Id. at 949 citing United States v. Kendall, 665 F.2d 126, 134 (7th Cir. 1981), cert. denied, 455 U.S. 1021 (1982). The decision to require the filing of a bill of particulars rests within the sound discretion of the trial court. Id. citing United States v. Serola, 767 F.2d 364 (7th Cir. 1985). The Seventh Circuit in Canino further noted that the government's employment of an "open file" policy which "provided the defendants with complete and open discovery of all evidence assembled and revealed in the government's investigation" made a bill of particulars unnecessary. The Defendant has failed to establish that the magistrate judge abused her discretion in denying the request for a bill of particulars and the order of the magistrate judge IS AFFIRMED.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 14th day of October, 1997.

/s/_____

Thomas J. Curran
United States District Judge